

in diagnostic or therapeutic patient management.

(5) For a claim that does not fall within the indication categories identified in § 601.33, the applicant or sponsor should consult FDA on how to establish the effectiveness of the diagnostic radiopharmaceutical for the claim.

(b) The accuracy and usefulness of the diagnostic information is determined by comparison with a reliable assessment of actual clinical status. A reliable assessment of actual clinical status may be provided by a diagnostic standard or standards of demonstrated accuracy. In the absence of such diagnostic standard(s), the actual clinical status must be established in another manner, e.g., patient followup.

#### § 601.35 Evaluation of safety.

(a) Factors considered in the safety assessment of a diagnostic radiopharmaceutical include, among others, the following:

- (1) The radiation dose;
- (2) The pharmacology and toxicology of the radiopharmaceutical, including any radionuclide, carrier, or ligand;
- (3) The risks of an incorrect diagnostic determination;
- (4) The adverse reaction profile of the drug;
- (5) Results of human experience with the radiopharmaceutical for other uses; and
- (6) Results of any previous human experience with the carrier or ligand of the radiopharmaceutical when the same chemical entity as the carrier or ligand has been used in a previously studied product.

(b) The assessment of the adverse reaction profile includes, but is not limited to, an evaluation of the potential of the diagnostic radiopharmaceutical, including the carrier or ligand, to elicit the following:

- (1) Allergic or hypersensitivity responses,
- (2) Immunologic responses,
- (3) Changes in the physiologic or biochemical function of the target and nontarget tissues, and
- (4) Clinically detectable signs or symptoms.

(c)(1) To establish the safety of a diagnostic radiopharmaceutical, FDA

may require, among other information, the following types of data:

- (A) Pharmacology data,
- (B) Toxicology data,
- (C) Clinical adverse event data, and
- (D) Radiation safety assessment.

(2) The amount of new safety data required will depend on the characteristics of the product and available information regarding the safety of the diagnostic radiopharmaceutical, and its carrier or ligand, obtained from other studies and uses. Such information may include, but is not limited to, the dose, route of administration, frequency of use, half-life of the ligand or carrier, half-life of the radionuclide, and results of clinical and preclinical studies. FDA will establish categories of diagnostic radiopharmaceuticals based on defined characteristics relevant to risk and will specify the amount and type of safety data that are appropriate for each category (e.g., required safety data may be limited for diagnostic radiopharmaceuticals with a well established, low-risk profile). Upon reviewing the relevant product characteristics and safety information, FDA will place each diagnostic radiopharmaceutical into the appropriate safety risk category.

(d) *Radiation safety assessment.* The radiation safety assessment must establish the radiation dose of a diagnostic radiopharmaceutical by radiation dosimetry evaluations in humans and appropriate animal models. The maximum tolerated dose need not be established.

#### Subpart E—Accelerated Approval of Biological Products for Serious or Life-Threatening Illnesses

SOURCE: 57 FR 58959, Dec. 11, 1992, unless otherwise noted.

#### § 601.40 Scope.

This subpart applies to certain biological products that have been studied for their safety and effectiveness in treating serious or life-threatening illnesses and that provide meaningful therapeutic benefit to patients over existing treatments (e.g., ability to treat patients unresponsive to, or intolerant

## § 601.41

of, available therapy, or improved patient response over available therapy).

### **§ 601.41 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.**

FDA may grant marketing approval for a biological product on the basis of adequate and well-controlled clinical trials establishing that the biological product has an effect on a surrogate endpoint that is reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. Approval under this section will be subject to the requirement that the applicant study the biological product further, to verify and describe its clinical benefit, where there is uncertainty as to the relation of the surrogate endpoint to clinical benefit, or of the observed clinical benefit to ultimate outcome. Postmarketing studies would usually be studies already underway. When required to be conducted, such studies must also be adequate and well-controlled. The applicant shall carry out any such studies with due diligence.

### **§ 601.42 Approval with restrictions to assure safe use.**

(a) If FDA concludes that a biological product shown to be effective can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to assure safe use of the biological product, such as:

(1) Distribution restricted to certain facilities or physicians with special training or experience; or

(2) Distribution conditioned on the performance of specified medical procedures.

(b) The limitations imposed will be commensurate with the specific safety concerns presented by the biological product.

### **§ 601.43 Withdrawal procedures.**

(a) For biological products approved under § 601.41 or § 601.42, FDA may withdraw approval, following a hearing as

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provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the required postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to ensure safe use of the biological product;

(4) The applicant fails to adhere to the postmarketing restrictions agreed upon;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the biological product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Biologics Evaluation and Research or the Director of the Center for Drug Evaluation and Research will give the applicant notice of an opportunity for a hearing on the Center's proposal to withdraw the approval of an application approved under § 601.41 or § 601.42. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.*

(1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the FEDERAL REGISTER in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of functions.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications: